



Zoning Board of Appeals Minutes – September 22, 2021

A meeting of the Town of Freetown Zoning Board of Appeals was held on September 22, 2021 at 6:00 pm at the Freetown Police Station Community Room. Zoning Board of Appeals Members Present: Chairman James Frates, Robert Jose, Nicolas Velozo, Swede Magnett

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2021 NOV -4 PM 2:35
Cheryl A. Estrella

Case #594

Chairman Frates called the meeting of the Freetown Zoning Board of Appeals to order at 6:00 pm.

Mr. Velozo made a motion to waive the reading of the public hearing notice. Mr. Jose seconded. The motion passed unanimously.

Daniel Raposo, applicant and owner of 5 Ethan Circle, said he is seeking an accessory apartment for his daughter and grandson.

Mr. Velozo said he believes the original plan showed the apartment being over 1,000 sq ft.

Jeffrey Chandler, Freetown Building Inspector and Zoning Enforcement Official, said that the plans have been revised and the apartment is now below 1,000 sq ft.

Mr. Jose told Mr. Raposo that if granted the accessory apartment has to be inspected in 5 years and must be reapplied for in 10 years, if the apartment is still in use.

Mr. Jose made a motion to close the public hearing for the special permit for an accessory apartment at 5 Ethan Circle. Mr. Velozo seconded. The motion passed unanimously.

Mr. Velozo made a motion to approve the accessory apartment special permit for 5 Ethan Circle. Mr. Jose seconded. The motion passed unanimously.

Case 592

Patrick Matthews, attorney representing the applicant Mark Bullock, said they are here tonight to appeal the Building Inspector's decision that 0 Chipaway Lane and 63 Chipaway Road are in common ownership. Mr. Matthews said that they were originally told by Jeff Chandler, the Current Building Inspector, and Scott Barbato, the prior Building Inspector, that there would be no issue building a house on 0 Chipaway Lane. Mr. Chandler said he received partial information the first time he and the applicant discussed the matter. Mr. Chandler said afterwards he looked up the property and found that it was in common ownership with 63 Chipaway Road. Mr. Chandler added that the structure on the back lot followed accessory structure setbacks.

Mr. Matthews approached the Board and presented the plot plan to them. Mr. Matthews said he believes this lot has not been joined. Mr. Matthews said the only non-residential lot is Lot 91 where Mr. Bullock has operated an autobody shop for decades and that there has always been a house and a garage on lot 91. Mr. Matthews added the Lot 85 was not vacant.

Mr. Matthews read MGL 40a Section 6 to the Board. Mr. Matthews explained that both lots were in existence for 70 years and were on separate deeds. Mr. Matthews explained that in Dial-A-Way Company vs. Zoning Board of Appeals states that paragraph 4 (of 40a Section 6) only applies to vacant land. Mr. Matthews said his position is that there was no merger here. Mr. Matthews other position was that the 2 lots are 2 different zoning districts and merging them would cause the whole lot to turn commercial.

Mr. Jose said the underlying zoning is residential. Mr. Matthews said if the lots merge than they have to use the least restrictive zoning, which would be commercial. Mr. Matthews said this sets up a situation where developers can own an industrial piece of property and buy adjacent lots, increasing their own footprint.

Mr. Chandler stated that they are requesting to build a house on a lot that already has one, which is not allowed in the by-law. **Chairman Frates** asked what is on lot 91. Mr. Matthews said a 900 square foot house and a body shop. **Mr. Jose** asked when the body shop was built. Mark Bullock, applicant, said 1972. **Mr. Jose** asked when the structure on the back lot was built. Mr. Bullock said 1981. Mr. Matthews said the lots get separate tax bills.

Mike Raposo, 65 Chipaway Road, said he would not like a commercial lot there.

Mr. Jose asked Mr. Chandler if he talked to the assessor's office. Mr. Chandler said yes, and he was told they were taxed separately because they are different uses.

Mr. Velozo asked Mr. Chandler what he considers the accessory structure. Mr. Chandler said the barn and explained that the front setback was for an accessory structure. Mr. Bullock said the building he's referring to is about 10-15 feet away from the road. **Mr. Jose** asked if Mr. Bullock planned on using the existing structure as a house. Mr. Bullock said no, that he planned on building a separate 1200 square foot house.

Leona Barrieau, 5 Jackie Lane, said she has lived next to Mr. Bullock for 40 years and she has no objections to him building his house. Roberta Ouellette, 11 Chipaway Lane, said she has no objections. Brian Debrito, 62 Chipaway, said he has no objection.

Mr. Matthews said that the concept of what happens when 2 lots are merged when zoned differently can be found in a couple different cases: Learoyd v Thurston and Junior v Karll. Mr. Matthews said that Learoyd v Thurston says that a merger in 2 lots caused by a changing in zoning goes to the least restrictive zoning and that Junior v Karll also says that if 2 lots that are merged then they become the least restrictive zoning.

Mr. Jose made a motion to continue the public hearing for Case #592 to the October 20, 2021 at 6 pm at the Freetown Town Hall. **Mr. Velozo** seconded. The motion passed unanimously.

Case 593

Chairman Frates read a letter from Paul E. Clancy Jr. who represents Benjamin Andrews and Mrs. Eugenia Andrews, who are direct abutters. The letter explains that Ms. Gonclaves is names as a defendant pending litigation in Bristol Superior Court in the matter of Benjamin Andrews, Jr. et al v Alan L. Alves, et al Docket Number 1973CV1174.

Keith Mello, attorney representing the applicant, stated that no injunction was put into place and that the plan before the Board does not include the disputed parcel. Mr. Mello asked that the letter be disregarded because the case before the Board does not deal with this small section.

Byron Holmes, Holmes Engineering, said that as the attorney mentioned, the disputed triangle section is not in the plan. Mr. Holmes stated that the lot is 4.3 acre parcel and that it would meet all requirements except for frontage. Mr. Holmes added that a lot of the surrounding parcels are do not meet the zoning requirements and that there are wetlands, but the house would be built well away from the 100 ft buffer.

Chairman Frates asked what their hardship is. Mr. Holmes said that the lot is a big lot that is unbuildable. **Mr. Velozo** asked when the lots lines were changed. Mr. Holmes said 1990 and that the frontage didn't change. **Chairman Frates** said then it is a new lot without enough frontage. Mr. Mello said the lot was created in the 70's, the job was only there for access purposes. **Mr. Jose** said what you're saying is that changing lot lines does not change the lot. Mr. Mello said it changed the lot but it did not create the hardship.

Mr. Velozo asked if the north lot was owned by Mr. Alves. Mr. Mello said yes. **Mr. Velozo** said he agreed with Mr. Jose, that when lot lines changed in the 1990s it became a new lot.

Benjamin Andrews, 188 Braley road, said that the property is still going through the court and that between his lawyer and my lawyer they made an agreement to not do anything with this land. Mr. Andrews added that the judge told them and they agreed. Troy Andrews, 87 lakeshore drive, Wayland, said it was my grandfather's land. Mr. Mello replied that the agreement to not doing anything to the land was only in regards to the piece in contention. Mr. T. Andrews stated that was Mr. Mello's interpretation.

Mr. Velozo said the lot was modified in 1990 so that's what the zoning has to be. **Mr. Velozo** asked why a decision has not been made on the Planning Board Form C subdivision application. Mr. Holmes said that the piece in contention is involved with the Form C Subdivision plan.

Mr. Velozo made a motion close the public hearing. **Mr. Jose** seconded. The motion passed unanimously.

Mr. Velozo asked if the plan was specifically created for this application. Mr. Holmes said it was. **Chairman** said 135 feet is a lot of frontage to give up. **Mr. Jose** said it would be much more than the Board has ever given up. **Mr. Jose** said a Form C Subdivision would clean this up. **Mr. Jose** asked what hardship the applicants are claiming. Mr. Mello said shape and topography.

Mr. Velozo said that multiple lots with insufficient frontage with mentioned but none of them only have 40 feet of frontage and that 40 feet is a long ways from 175 feet. **Mr. Jose** said he can see the both sides of the argument since the lot originally created prior to subdivision control. **Mr. Jose** said that since the lot lines were changed in 1990 the lot was adhere to the 1990 zoning.

Mr. Jose made a motion to deny the variance request, with the reason for the denial being that 40 feet of frontage is extra ordinary for this town and that the correct path is through the Planning Board. **Mr. Velozo** seconded. The motion passed unanimously.

Case #595

Mr. Chandler stated that his decision was that the lots are merged due to common ownership and due to the lots being merged a second house could not be built on the lot. Mr. Chandler said he talked to the assessors office and there was a petition to the Planning Board to merge the lots, which was granted.

Mary Jo Rebello, applicant and owner, said she does not know anything about the lots being merged and was told that they could build a second house on the lots.

Eli Rebello, son of Mary Jo, asked if he would be able to build on the lot.

Chairman Frates said no as the 1984 plan combined the lots. Mr. Rebello asked the property cannot be redivided. **Mr. Jose** said it can be redivided but it still would be unbuildable. **Chairman Frates** said the Board can only make a decision on whether on the lots are under common ownership. **Mr. Jose** asked if the applicants retained counsel on the matter. Ms. Rebello said she talked to an attorney who said he did not see that there was any problem.

John Rebello, applicant and owner, said that the contractor told them that they to buy the lots together.

Fernando Dasilva, 8 Woodlawn Road, said when he bought his lot he was the only house on the street. Mr. Dasilva said that his contractor liked the area so much that he bought 2 lots and because he was not from town so he did not realize that the lots were being joined. Mr. Dasilva asked they can get rid of common ownership. Mr. Dasilva added that from his point of view he would prefer a house instead of woods. **Mr. Velozo** said that to could change the Zoning they would have to go through Planning Board and Town Meeting. **Mr. Jose** said they would have to go through the planning board, which he is a member of, and get them to hold a public hearing to put this forth for Town Meeting. **Chairman Frates** said that where he lives a bunch of lots were combined.

Mr. Jose said that the applicant has the option to withdraw or to continue and that continuing would allow the applicants to talk to an attorney.

Mr. Velozo asked if there was anything on the vacant lot. Mr. E. Rebello said that there's nothing there except for woods.

Mr. Jose said there are 3 options: continue, deliberate, withdraw.

Mr. Chandler said that there is not enough land to create a new lot.

Ms. Rebello said deliberate.

Mr. Jose made a motion to close the public hearing for Case #595. **Mr. Velozo** seconded. The motion passed unanimously.

Mr. Jose made a motion to affirm Mr. Chandler's decision. **Mr. Velozo** seconded. The motion passed unanimously.

Receive and Approve Meeting Minutes from May 12, 2021

Mr. Jose made a motion to approve the meeting minutes with the condition that grammatical and spelling errors be corrected. **Mr. Velozo** seconded.

Discussion and Vote on Reorganization of the Board

Mr. Jose made a motion to appoint **Nicolas Veloza** as the Chairman for the Zoning Board of Appeals. **Chairman Frates** seconded. The motion passed unanimously.

Mr. Jose made a motion to adjourn. **Mr. Frates** seconded. The motion passed unanimously.

Respectfully Submitted,
C. Nils McKay
Zoning Board of Appeals Clerk